ICO's call for views on its draft access to information strategy: a summary of responses and ICO comment

Introduction

In January 2019, the ICO published a consultation on its draft access to information strategy, 'Openness by Design', with a deadline of 8 March 2019 for comments.

Our survey set out key areas for feedback in relation to the overall proposed vision and goals for the strategy, asked for views on the prioritisation of those goals, and provided an opportunity for respondents to make any further general comments.

Overall, we received 109 comments through the online survey and a further four sent to us through email. They are broken down as follows:

- Members of the public 29%
- Representatives of public authorities 25%
- Journalists 3%
- Civil society organisations 9%

Other (made up of a mix of members of professional organisations and their members, trade bodies, ombudsmen, academics) 34%

A wide range of issues were raised through the consultation and we are grateful to the individuals and organisations who responded to the consultation and to those who offered to work with us further as we move to implement our new strategy.

While we cannot respond individually to each contribution, we have provided an overview of the key themes that have emerged and some comments on our emerging thinking from each area of the consultation as we finalise our access to information strategy.

Key themes

The proposed vision for the access to information strategy

The vast majority of respondents (100) to the consultation, across all groups and sectors, either agreed, or broadly agreed, with the proposed vision for the access to information strategy. Many respondents specifically welcomed the fact that the ICO is developing a new access to information strategy.

Of the small number who did not agree with the proposed vision, they felt it did not go far enough, or in a very few cases, was too vague.

There were some useful areas for further consideration in terms of the emphasis we should give in the vision to our core regulatory role to uphold information rights. Some respondents also wanted us to be clearer about the relationship between our access to information and privacy regulatory roles and the interrelationships between them. Some respondents wanted additional emphasis on the importance of the ICO working in partnership with those it regulates to deliver the vision.

ICO comment

There is support for the proposed vision from all sectors responding to the consultation.

We will review the extent to which we need to be clearer in the vision, or in the explanatory text that goes alongside the vision, about our core role to uphold information rights.

We will make clearer the relationship between our regulation of access to information rights and data privacy and emphasise that to deliver the vision, the ICO needs to work in partnership with a wide range of stakeholders including civil society organisations and those we regulate.

The proposed strategic goals

There were 95 answers to the online question about whether respondents agreed overall to the proposed five strategic goals set out in the draft strategy. A significant majority of respondents, across the different sectors, supported the proposed goals. Of those who did not, the most significant suggestions for change related to setting out a clearer focus on non-compliance and enforcement activity as a goal in its own right.

Not surprisingly there were some differing views about some of the goals, and how they might be implemented, depending upon sectors. Civil society organisations, journalists, and some of the public authorities in particular, welcomed the emphasis on compliance and enforcement and saw this as the priority for the strategy. There was feedback that we should be clearer about the priority to increase enforcement activity and the types of work this would entail.

Most public authorities – from local and central government organisations – welcomed the further development of accessible guidance for FOIA and EIR and saw this as a priority, especially where it could be tailored to meet specific sectoral needs. There were a number of comments about currently published guidance now being out-of-date. There were some specific suggestions about areas for revised or new guidance, including some of the very practical elements of FOIA and EIR management.

There were some concerns by some public authorities about the impact of raising awareness of access to information rights at a time when they felt they were already struggling with demand. At the same time, there was strong support from others about the need to raise public awareness of access to

information rights and some suggestions for improvements to the visibility of the ICO's regulation of FOIA and EIR on its website. There were also suggestions for the development of tools such as 'FOI myth-busting' to parallel some of the recent ICO initiatives in relation to data protection.

There was support for the need to ensure that the FOIA and EIR remain fit for purpose and several respondents referred to the ICOs recent work on the scope of access to information legislation in relation to contracted out public services. There were also a range of suggestions about other aspects of the legislation that would benefit from further review including the operation of some of the exemptions, issues of timeliness and the ICO's enforcement powers.

For many public authorities, including small ones, there were concerns raised about a series of challenges they feel they face in meeting the requirements of FOIA and EIR. The challenges included the level of resources available for FOIA and EIR work, at a time when they report overall levels of resources are declining. Some public authorities also raised concerns about the increasing volume and complexity of FOIA and EIR requests and what some of them termed as 'misuse' of access to information legislation by private sector organisations making use of it within a commercial context.

ICO comment in relation to the overall goals

There is support for the overarching goals proposed in the draft access to information strategy from the majority of respondents.

We recognise the issues raised by some public authorities about the challenges they face in meeting their FOIA and EIR obligations. However, we think this also creates important opportunities for public authorities to develop their leadership role in relation to delivering on the requirements of FOIA and EIR and the opportunities they have to champion transparency and accountability.

The ICO wants to work with public authorities to support them in meeting their legal obligations and it will take proportionate compliance and enforcement measures in accordance with the Regulatory Action Policy where those obligations are not being met.

Suggestions for changes to the proposed goals

There were a small number of specific suggestions for amendments to the proposed goals, rather than more general comments about the operation of FOIA and EIR.

These tended to focus around particular issues. For example, in relation to goal 1, a suggestion was made to strengthen the focus in relation to increasing regulatory compliance and enforcement activity.

In addition, in relation to goal 1, there was feedback to suggest strengthening the links between information management and good records management as

essential building blocks for compliance with FOIA and EIR. Some respondents also highlighted the relationship between the principles of good administration and the requirements of openness and accountability as set out by public ombudsman services.

In relation to FOIA and EIR operating in a digital context there were a range of views. There were examples of public authorities who reported the benefits of joining up their technological 'digital by design' work with transparency and openness initiatives and some suggestions for the opportunities to build stronger links across government's digital, big data and openness policy priorities. Other feedback raised concerns about how, at a very basic level, some public authorities seemed to be failing to make effective electronic searches.

ICO comment

We will review the wording of goal one to make clearer the focus on increased compliance and enforcement action.

We will be more explicit about the essential role of information management and good records management as the foundations of good FOIA and EIR practice and the relationship with the principles of good administration as set out by public ombudsman services.

We will strengthen references to the importance for public authorities to review the operation and delivery of access to information rights at board level.

Priority actions

We asked respondents to rank the priority actions under each goal and to give us any specific comments about the priority actions.

Taken together for each of the five goals there were clear priorities from the consultation feedback as show below. For each of the proposed priority actions we have listed the top ranking priorities for each goal from across all of the consultation responses.

We will also review the more specific suggestions for how we deliver the priority actions when particular work areas are being scoped. This includes, for example, ideas about how we publicise details of enforcement activity or priority areas for guidance or areas of focus for practitioner workshops.

- **Goal #1 Improve standards of accountability, openness and transparency in a digital age**

- Increase the impact of FOIA enforcement activity through targeting of systemic noncompliance, consistent with the approaches set out in our Regulatory Action Policy (43%).
- Develop, pilot and roll out a self-assessment toolkit for public authorities to support them in making improvements to information handling practice and openness (34%).

- **Goal #2 Provide excellent customer service in our independent review services for the public and public authorities**

- Review and develop new guidance, consistent with our Regulatory Action Policy, prioritising those areas of greatest impact and promoting external guidance alongside the publication of our Decision Notices (46%).
- Review and implement improvements to our core processes and systems to meet customer needs and improve the efficiency and quality of the services we provide (28%).

- **Goal #3 Raise awareness of access to information rights and make them more accessible**

- Review and refine our policies, processes and systems to make it easy for people to bring their cases to us and for public authorities to comply with the requirements of the law (49%)
- Develop new engagement channels to promote guidance, support and good practice for public authorities including the organisation of practitioner workshops (32%).

- **Goal #4 Promote the reform of information rights legislation so it remains fit for purpose**

- Continue to build and promote the case for changes to the scope of FOIA and EIR legislation working closely with colleagues in government and Parliament, public authorities, the private sector, civil society organisations, the media and the public (59%).

- **Goal #5 Develop and sustain new international partnerships**

- Continue to promote access to information rights as part of the wider work of the Open Government Partnership (57%).
- Promote standards of openness and transparency globally and aim to embed good practice by providing the secretariat for the International Conference of Information Commissioners (33%).

ICO comment

The ranking of the priority actions provides us with useful feedback as we develop annual action plans to deliver the access to information strategy.

In particular, for the first year of the strategy we will prioritise actions in relation to increasing our compliance and enforcement activity, reviewing our approaches to how we monitor poor performance and our use of Enforcement Notices, updating and developing our external guidance and beginning our work on special or thematic reports.

We will also continue to keep FOIA and EIR under review and advocate for the implementation of the changes recommended in our 'Outsourcing Oversight' report.

There were also a number of helpful comments in relation to the potential impact of self-assessment toolkits and how they might be developed. Whiles some respondents felt this might increase the potential burden on public authorities; others thought that this work needed to be focused specifically as a tool to drive compliance. There was also useful feedback about the importance of not duplicating existing toolkits. We will consider these issues further as we scope this work in 2019/20.